

OCT 18 2007

Application No.: 10/781,504

Docket No.: SPINE 3.0-455 CIP CONT II

REMARKS

This communication is in response to the Official Action mailed August 8, 2007. The following sets forth Applicants' remarks relating to the currently pending claims and the outstanding Action.

In the Official Action, the Examiner rejected claims 1-7, 13-15, 17, 19, and 20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,236,460 to Barber ("Barber") and claim 16 under 35 U.S.C. § 103(a) as being obvious over the combination of previously cited U.S. Patent No. 5,458,641 to Ramirez Jimenez ("Ramirez Jimenez") and U.S. Patent No. 4,105,407 to Sanderson ("Sanderson"). Essentially, it is the Examiner's position that Barber teaches each and every one of the limitations of the claims, most notably independent claims 1, 15, and 17, save for claim 16, which the Examiner believes is rendered obvious in view of the combination of Ramirez Jimenez and Sanderson. Applicants respectfully disagree with the Examiner's use of the prior art, and in particular, the Barber reference.

Barber is directed to a vertebral body prosthesis that is designed to be inserted and implanted between vertebral bodies in humans. The prosthesis taught in Barber includes tubular inner and outer bodies that telescope relative to each other with each body having a platform on one end. The platform is ultimately secured to adjacent vertebral bodies through the use of sharp pins formed on the platform that pierce the vertebral bodies to stabilize the prosthesis. In addition, a bracket slides laterally and is secured by screws to the sides of the vertebral bodies. The Examiner notes element 55 of Barber as being a stem which extends anteriorly away from a surface of the base of the implant that is operable to facilitate movement of the intervertebral disc replacement device during insertion thereof into the intervertebral disc space, such that the first

Application No.: 10/781,504

Docket No.: SPINE 3.0-455 CIP CONT II

and second members may be at least one of inserted into and moved within the intervertebral space without substantially changing their orientation with respect to one another. Further, the Examiner asserts that stem 55 is sized and shaped for engagement with an insertion handle 61 to further facilitate movement of the intervertebral disc replacement device. Applicants respectfully submit that the Examiner has mischaracterized that which is taught in the Barber reference.

Specifically, Applicants previously submitted amendments in connection with the present matter which required an insertion plate limitation in each of the pending claims. This insertion plate is ultimately coupled to the first and second members of an intervertebral disc replacement device during an insertion procedure, and includes a first mounting element, a second mounting element, and a stem extending away from the two elements for engagement with an insertion handle. Such is far different from that which is taught in Barber. Barber makes no mention of an insertion plate whatsoever for contacting both the first and second members of the prosthesis taught therein. Rather, Barber teaches an installation tool 55 which is secured by threads to a part 17 in outer body 13 of the apparatus. This installation tool is used to inject a resin packet 57 that contains a liquid resin, which, once injected into the prosthesis 11, will harden to a rigid mass. A plunger 59 is provided to push the resin of resin packet 57 through a hole in injecting tool 55, and the plunger is moved forward by a means of a threaded handle 61. As such, it is clear from the disclosure of Barber that the reference is far different from the invention claimed in the presently pending claims. Where the present invention is directed to an insertion plate for coupling two portions of a two-piece spinal implant during insertion procedure and a corresponding insertion handle, Barber simply teaches an implant having two portions that are already

Application No.: 10/781,504

Docket No.: SPINE 3.0-455 CIP CONT II

fixed to one another (and remain fixed to one another) and a installation tool 55 capable of injecting resin therein. There is simply no teaching of providing an insertion plate, nor would one be required in the device taught in Barber.

Because each and every one of the currently pending claims, most notably independent claims 1, 15, and 17, include the limitation of an insertion plate, Applicants respectfully submit that rejections of such claims as being anticipated by Barber are improper. Thus, Applicants respectfully request allowance of these independent claims. Given that the remaining claims pending in the application depend from one of independent claims 1, 15, or 17, Applicants respectfully submit that such claims also constitute allowable subject matter. A dependent claim is necessarily narrower than an independent claim from which it properly depends. Therefore, in light of all of the above, Applicants respectfully request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are correctly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (888) 654-5220 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: October 15, 2007

Respectfully submitted,

By _____
Kevin M. Kocun
Registration No.: 54,230

Application No : 10/781,504

Docket No.: SPINE 3 C-455 CIP CONT II

LEARNER, DAVID, LITTENBERG,
KROMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants